Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C 20554

JUN 4 1996

In the Matter of	
Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996	CS Docket No. 96-85

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF THE NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

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SUMMARY

- The City of New York's primary goal with respect to the additional effective competition standard is to protect cable subscribers from unreasonable rates that may result if token, rather than effective, competition will be deemed sufficient under the new test. While the City is eager for true competition to develop in the multichannel video distribution market, competition should not be considered effective merely because an LEC invests insignificantly in an MVPD. Congress intended effective competition to be found when competitors have established a presence in the market. It should not become a semantic mechanism by which consumers lose the protection of existing regulations and thereby fall victim to such anti-competitive practices as monopolistic rates and predatory pricing.

- A wireless operator cannot be said to "offer" broadcast programming that is not provided through its own facilities and equipment. An MMDS operator providing an A/B switch is not "physically able to deliver" a service that includes "comparable programming" because under such circumstances its service does not include broadcast programming.

- Under the plain language of the statute, SMATV systems are direct-to-home services that are excluded from consideration under the new effective competition test. Subscribers should not suffer the anomalous result of losing statutory protection merely because a SMATV system sells an interest in its operation to a telephone company where such interest may constitute affiliation under the Commission's interim rules. The public interest demands that formalistic technicalities not determine whether competition is effective.

- To protect the public from a finding of effective competition under the new test merely because a small amount of stock has changed hands, the Commission should adopt an affiliation standard of 50% or more. This will tend to avoid the unfair result of finding effective competition based upon a LEC's *de minimis* investment in an existing MVPD. Such passive investments have no bearing on whether competition is effective, and do nothing to protect consumers from cable rates that, in reality, are unrestrained by a competitive market in video programming services.

- The Commission should not permit the aggregation of LEC interests in considering whether the affiliation standard has been met. If aggregation were permitted, subscribers would lose statutory protection where an MVPD serving an insignificant number of subscribers has sold small interests in its operation to several telephone companies. Such arrangements, by themselves, neither contribute to competition nor restrain cable television rates. To protect the public

interest, therefore, any affiliation standard adopted by the Commission must be met by a single LEC for purposes of the new effective competition test.

- We believe that a LEC or its affiliate must offer its service to more than merely a token number of subscribers in the franchise area in order to constitute effective competition under the new test. Subscribers should not lose statutory protection where a LEC or its affiliate is engaged in only experimental service or test marketing to an insignificant number of subscribers in the franchise area. Token service does not give consumers a choice of service providers and does nothing to prevent the cable operators' undue market power; nor is it indicative of the competitive market that Congress contemplated to forestall such undue market power. An interpretation that Congress intended effective competition in such situations would render the existing effective competition provisions of the Act superfluous. The Commission should therefore protect the public by requiring that a LEC or its affiliate offer comparable programming services to at least fifty percent (50%) of the households in the incumbent cable operator's franchise area as a condition precedent to finding effective competition under the new standard.

- Given Congress's decision not to impose a deadline on the filing of an LFA complaint, the Commission should not create one. If the Commission decides, however, that some deadline is appropriate, the City recommends that LFAs be allowed at least 180 days from the later of their receipt of the cable operator's rate justification forms or expiration of the subscribers' 90-day complaint window in which to submit a CPST complaint to the Commission. This will permit a reasonable period for the LFA to determine whether a complaint to the Commission is warranted. It will also eliminate unnecessary complaints, thereby conserving the Commission's resources.

- The City believes that nothing should prevent individually billed MDU residents from enjoying the benefits of bulk discounts, as long as the bulk discount is negotiated by the property owner or manager on behalf of all MDU residents.

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To: The Commission

COMMENTS OF THE NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

The New York City Department of Information Technology and Telecommunications ("City of New York" or "City") respectfully submits these comments in response to the Federal Communications Commission's ("FCC's" or "Commission's") Notice of Proposed Rulemaking ("*Notice*") in the above-captioned proceeding

I. INTRODUCTION

On April 9, 1996, the Commission released an *Order and Notice of Proposed Rulemaking* regarding implementation of the Cable Act Reform Provisions of the Telecommunications Act of 1996 The *Order* adopted interim

[1] *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking*, CS Docket No 96-85, FCC 96-154 (released April 9, 1996)
(continued...)

rules while the *Notice* sought comment on final rules and on items requiring further rulemaking to be fully and clearly implemented. Section 301 of the Telecommunications Act of 1996[2] amends various provisions of Title VI of the Communications Act of 1934.[3] These include provisions concerning effective competition,[4] cable programming service tier ("CPST") rate complaints,[5] uniform rates,[6] technical standards,[7] and subscriber notice.[8]

Among other things, the *Notice* seeks comment on the meaning and applicability of the 1996 Act's additional test for effective competition. With regard to this new test, the Commission specifically has invited comment on: (I) whether wireless cable operators should be deemed to be "offering" "comparable programming" where the operator does not transmit broadcast signals to the subscriber *via* microwave;[9] (ii) whether, for purposes of the new effective competition test, a definition of "affiliate" other than the one now found in Title I of the Communications Act is appropriate;[10] (iii) whether satellite master antenna television ("SMATV") systems constitute direct-to-home satellite services and are

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(...continued)
(*Order* and *Notice*).

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, § 301, 110 Stat. 56, 114 (approved Feb. 8, 1996) ("1996 Act").

[3] Communications Act of 1934, Pub. L. No. 73-416, 48 Stat. 1064 (1934), codified at 47 U.S.C. § 151 *et seq.* ("Communications Act").

[4] Communications Act § 623(l)(1), 47 U.S.C. § 543(l)(1).

[5] Communications Act § 623(c)(3), 47 U.S.C. § 543(c)(3).

[6] Communications Act § 623(d), 47 U.S.C. § 543(d).

[7] Communications Act § 624(e), 47 U.S.C. § 544(e).

[8] Communications Act § 632, 47 U.S.C. § 552.

[9] *Notice* at ¶ 70.

[10] *Id.* at ¶¶ 76-77.

therefore not considered under the new effective competition test;[11] and (iv) whether effective competition should be found if a LEC or its affiliate offers service to subscribers in any portion of the franchise area.[12] In addition, the *Notice* seeks comment on the interim procedures adopted in the *Order* regarding the filing of CPST rate complaints by local franchising authorities ("LFAs"),[13] the uniform rate requirement,[14] and technical standards.[15]

The City will limit its comments to the issues described above. Our primary goal with respect to the additional effective competition standard is to protect cable television subscribers from unreasonable rates that may result if token, rather than effective, competition will be deemed sufficient under the new test. While the City is eager for true competition to develop in the multichannel video distribution market, competition should not be considered effective merely because an LEC invests insignificantly in an MVPD serving few subscribers. Congress intended effective competition to be found when competitors have established a presence in the market. It should not become a semantic mechanism by which cable operators circumvent existing regulations whose purpose is to protect subscribers from such anti-competitive practices as monopolistic rates and predatory pricing.

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[11] *Id.* at ¶ 71.

[12] *Id.* at ¶ 72.

[13] *Id.* at ¶¶ 78-79.

[14] *Id.* at ¶¶ 98-100.

[15] *Id.* at ¶ 104.

II. DISCUSSION

A. Effective Competition

Under the 1992 Cable Act,[16] a cable system is subject to effective competition (and thus exempt from rate regulation) if any one of the following three tests are met:

> (1) Fewer than 30 percent of the households in its franchise area subscribe to the system's cable service
> (2) The franchise area is:
> (I) served by at least two unaffiliated Multichannel Video Programming Distributors ("MVPDs"), each of which offers comparable programming to at least 50 percent of the households in the franchise area; and
> (ii) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.
> (3) An MVPD, operated by the franchising authority for that franchise area, offers video programming to at least 50 percent of the households in the franchise area.[17]

Section 301(b)(3) of the 1996 Act adds a fourth test. Under the new additional standard, a cable operator will be subject to effective competition where:

> a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.[18]

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[16] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act").

[17] Communications Act, § 623(l)(1), 47 U.S.C. § 543(l)(1); *see* 47 C.F.R. § 76.905(b).

[18] Telecommunications Act of 1996, Pub. L. No. 104-104, § 301(b)(3), 110 Stat. 56, 115 (continued...)

Unlike the original three effective competition tests, the new fourth test does not explicitly set a threshold percentage of subscribers who must either be served (penetration rate) or offered service (pass rate) by a LEC or its affiliate for effective competition to be found. Given the statutory purposes of protecting consumer interests in the receipt of cable television service and preventing cable operators' undue market power, the Commission must determine when the level of competition provided by a LEC or its affiliate is sufficient to have a restraining effect on cable television rates.[19]

i. Level of Competition

Although the Commission has tentatively concluded that the new test for effective competition applies equally regardless of whether the LEC or its affiliate is merely the video service provider rather than the licensee or owner of the facilities,[20] the City believes that the statute cannot support such a construction. Congress's inclusion of the parenthetical "or any [MVPD] using the *facilities* of [a LEC or its affiliate]" in the first clause plainly indicates its intent that such facilities must be owned by the LEC or its affiliate under the new standard.[21] While Congress stated that a LEC or its affiliate may offer video programming services to subscribers "by any means," the context clearly indicates that Congress

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(...continued)
(1996), *to be codified at* 47 U.S.C. § 543(l)(1)(D).

[19] 1992 Cable Act § 2(b).

[20] *Notice* at ¶ 71.

[21] 1996 Act § 301(b)(3), *to be codified at* 47 U.S.C. § 543(l)(1)(D) (emphasis added).

intended such "means" to indicate the LEC's *facilities*, including telephone facilities but excluding direct-to-home satellites. We therefore believe a conclusion that the new effective competition test requires the LEC or its affiliate to be the owner or licensee of the facilities in question is clear.

The Commission seeks comment regarding whether Congress intended effective competition to be found if a LEC or its affiliate offers service to subscribers in any portion of the franchise area, or whether such service must be offered to some larger portion of the franchise area to constitute effective competition.[22] The new standard does not explicitly set a threshold penetration rate or pass rate that a LEC or its affiliate must achieve in order for effective competition to be found. Nevertheless, Congress did not repeal the existing effective competition standards, which are designed to protect consumer interests in the receipt of cable service and ensure that cable television operators do not have undue market power *vis-a-vis* video programmers and consumers. This remains the stated policy of Congress.[23]

The Commission should interpret the new effective competition standard in the context of the statute as a whole and in harmony with its purposes. Although the new standard does not explicitly set the threshold penetration or pass rates included in the existing standards, to interpret it without reference to some such threshold would conflict with the underlying purposes of the statute and render other portions of the Act meaningless. In order to rely on the marketplace

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[22] *Notice* at ¶ 72.

[23] *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(b)(4)-(5), 106 Stat. 1460 (1992).

to protect consumer interests in the receipt of cable service and prevent undue market power by cable operators, consumers must have a realistic choice of MVPDs. An interpretation of the new standard that would find effective competition where a LEC or its affiliate offered service in any portion of the franchise area (no matter how small) contravenes the statute's purpose, unfairly deprives consumers of the protection Congress sought to ensure, and renders the existing effective competition and rate regulation provisions of the statute meaningless.

We consequently believe that a LEC or its affiliate must offer its service to more than merely a token number of subscribers in the franchise area in order to constitute effective competition under the new test. For example, subscribers should not lose statutory protection where a LEC or its affiliate is engaged in only experimental service or test marketing to an insignificant number of subscribers in the franchise area. Token service does not give consumers a choice of service providers and does nothing to prevent the cable operators' undue market power. It is not indicative of the competitive market that Congress contemplated to deter such undue market power. Moreover, it will not have a restraining effect on cable television rates. As mentioned above, an interpretation that Congress intended effective competition in such situations would render the existing effective competition provisions of the Act superfluous.

The Commission should therefore protect the public by requiring that a LEC or its affiliate achieve a reasonable pass rate as a condition precedent to finding effective competition under the new standard. Only then will consumers have a real choice of multichannel video programming distributors, the *sine qua*

non of an effectively competitive market. Only then will the cable operators' undue market power be forestalled as Congress intended.

The City agrees, however, that an incumbent cable operator's response to a LEC or LEC-affiliated competitor may depend upon the potential, as well as the actual, competition that such an adversary provides. Consequently, application of the existing fifteen percent penetration test may be unnecessary in the context of the new standard. However, to ensure that the statute's purposes are achieved and the public is protected, the Commission should require that the existing fifty percent (50%) offering test be satisfied before finding effective competition under the new standard. By applying the current offering test, but not the existing penetration test, the Commission will properly take account of this factor and achieve the statutory purpose in implementing the new test for effective competition.

ii. Definition of "Affiliate"

Under Title I of the Communications Act, "affiliate" means a person that either directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person ("own" means to own an equity interest, or its equivalent, of more than 10 percent).[24] The Commission has adopted this definition for Title VI (Cable Act) reform purposes on an interim basis. Nevertheless, the Title I definition of "affiliate" does not necessarily apply to matters under Title VI, which contains its own affiliate definition with no

[24] Communications Act, § 3; 1996 Act, § 3(b).

ownership threshold. The City agrees that this gives the Commission discretion to establish an ownership threshold other than 10% for purposes of the new prong of the effective competition test.[25]

Congress clearly recognized that different affiliation standards may be appropriate for different purposes. Moreover, the context of the new effective competition test requires an affiliate definition that sets a significantly higher ownership threshold than that found in Title I. To protect the public from a purely technical finding of effective competition under the new test merely because a small amount of stock has changed hands, the Commission should adopt an ownership affiliation standard of 50% or more.[26] This will tend to avoid the unfair result of finding effective competition based upon a LEC's *de minimis* investment in an existing MVPD. Such passive investments have no bearing on whether competition is effective, and do nothing to protect consumers from cable rates that, in reality, are unrestrained by a competitive market in video programming services.

Congress contemplated that the affiliate referred to in the new effective competition test would be the LEC's substantially owned or controlled affiliate. The new standard is designed to account for competitive cable services that telephone companies may provide pursuant to Section 302 of the 1996 Act.[27]

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[25] *Notice* at ¶ 16.

[26] At a minimum, a 20% standard, similar to that used in the Commission's small system cost-of-service rules should be considered. *See* 47 C.F.R. § 76.934(a).

[27] 1996 Act § 302, adding new Sections 651-53 to the Communications Act.

In repealing the telephone-cable television cross-ownership ban,[28] Congress sought to provide telephone companies with "multiple entry options to promote competition . . . and to maximize consumer choice of services "[29] To ensure that competition would develop, Congress limited acquisitions and generally prohibited joint ventures between LECs and cable operators in the same market to provide video programming or telecommunications services in such market. Acquisitions are limited to a 10% financial interest or any management interest,[30] and exceptions were limited to "the most restrictive provisions . . . in order to maximize competition between local exchange carriers and cable operators within local markets."[31] The new effective competition standard must be viewed in the context of the Act as a whole. The new expanded standard, which if met will deregulate both basic and cable programming services, only makes sense where the *telephone company* itself "is offering video programming services directly to subscribers . . . in the franchise area of an unaffiliated cable operator"[32] because only then will such cable operator certainly be confronted with a entity prepared to compete effectively with it. This undoubtedly is the reason that the new standard, unlike the existing effective competition tests, does not include an explicit penetration rate. An incumbent cable operator facing competition from a larger and more powerful telephone company may be entitled to relaxed regulatory

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[28] 1996 Act § 302(b)(1), repealing 47 U.S.C. §533(b)

[29] Conference Report at 172

[30] 1996 Act § 302(a), adding new Section 652 to the Communications Act

[31] Conference Report at 174

[32] *Id.*, at 170.

treatment in such circumstances because a LEC, or its affiliate, generally has the financial and technical ability to effectively compete with the cable operator. The same simply is not the case where the LEC has merely a small investment in an existing MVPD that otherwise fails to provide effective competition to the incumbent cable system. Consumers should continue to receive regulatory protection in the latter case.

The Commission has tentatively concluded that both active and passive ownership interests are attributable, and it seeks comment on whether beneficial interests are attributable and whether the interests of more than one LEC can be aggregated for purposes of the affiliation standard.[33] In light of the new effective competition test's potential to swallow the existing rule, the City urges the Commission to consider only active ownership interests to be attributable under the new test. Congress specifically did not repeal the existing definition of effective competition, and the Commission should avoid a construction of the new test that renders the existing definition meaningless. Moreover, the Commission should not permit the aggregation of LEC interests in considering whether the affiliation standard has been met. If aggregation were permitted, subscribers would lose statutory protection where an MVPD serving an insignificant number of subscribers has sold small interests in its operation to several telephone companies. Such arrangements, by themselves, neither contribute to competition nor restrain cable television rates. To protect the public interest, therefore, any

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[33] *Notice* at ¶ 77.

affiliation standard adopted by the Commission must be met by a single LEC for purposes of the new effective competition test

iii. Definition of "Comparable Programming"

In accordance with congressional intent, the Commission has adopted its preexisting definition of "offer" for purposes of the new effective competition test.[34] The new effective competition test, however, also requires that LECs provide programming services that are "comparable" to those of the cable operator in order for such services to constitute effective competition.[35] Although the Conference Report cites the Commission's existing definition of "comparable programming,"[36] it provides a definition that differs from that found in the Commission's rules. While under the Commission's definition "comparable" means a minimum of twelve channels of which at least one is non-broadcast, the Conference Report states that "[t]he conferees intend that 'comparable' requires that the video programming services should include access to at least 12 channels of programming, at least some of which are television broadcasting signals."[37]

The City agrees with the Commission's determination to require that "comparable" programming include the signals of local broadcasters.

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[34] Telecommunications Act of 1996 Conference Report, S.Rep. No. 104-230 at 170 ("Conference Report"); 47 C.F.R. § 76.905(e). Under the Commission's existing rule, an MVPD's service is deemed offered when: (1) the MVPD is physically able to deliver service to potential subscribers; and (2) no regulatory, technical, or other impediments to households taking service exist, and subscribers in the franchise area are reasonably aware that they may purchase the MVPD's services.

[35] 1996 Act § 301(b)(3).

[36] 47 C.F.R. § 76.905(g).

[37] Conference Report at 170.

Subscribers should not lose access to important local broadcast programming merely because they elect to purchase the services of a competing MVPD.

iv. MMDS Provision of Local Broadcast Channels

With regard to MMDS, the City recommends that the Commission reconsider its interim determination that a wireless operator will be deemed to be "offering" broadcast programming regardless of whether such programming is provided to subscribers by microwave, so long as the wireless operator is responsible for installing an A/B switch or similar device for its subscribers to receive such programming by over-the-air antennas. This fails to protect consumers in areas such as New York City, where the provision of an over-the-air antenna may be ineffective for receiving television broadcasts.

As an initial matter, we do not believe that a wireless operator can be said to "offer" broadcast programming that it does not provide through its own facilities and equipment. The Commission's existing rules confirm this interpretation.[38] An MMDS operator providing an A/B switch is not "physically able to deliver" a service that includes "comparable programming" because under such circumstances its service does not include broadcast programming. In addition, in areas where reception of broadcast programming by over-the-air antennas is problematic, the provision of an A/B switch is meaningless, and therefore constitutes an impediment to households receiving comparable service within the meaning of the Commission's existing rule.

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[38] *See* 47 C.F.R. §§ 76.905(e), 76.905(g).

As the evidence presented to Congress prior to enactment of the 1992 Cable Act made clear, A/B switches are often cumbersome and ineffective, create unnecessary burdens for consumers, and unnecessarily add to the cost of obtaining television service.[39] Moreover, the introduction of A/B switches can only exacerbate signal leakage problems. The City therefore recommends that the Commission avoid relying on such devices in the context of the new effective competition standard.

v. SMATV Systems

The *Notice* seeks comment regarding whether the type of service provided by or over the facilities of the LEC or its affiliate should be relevant in the context of the new effective competition test. Given the statute's exclusion of a type of service—*viz.*, direct-to-home satellite services—from consideration under the new effective competition standard, this question must be answered affirmatively. Congress recognized that such services are not generally available throughout the community and therefore do not represent a significant enough presence in the market to be considered effective competition under the new standard. Moreover, satellite master antenna television ("SMATV") systems are conspicuously absent from the Conference Report's list of media that are included under the new standard for LEC-provided video programming services.[40] SMATV

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[39] *See, e.g.*, Cable Television Consumer Protection Act of 1991, 102d Cong., 1st Sess., H.R. Rep. No. 102-92 at 87 (June 28, 1991).

[40] Conference Report at 170. "'By any means' includes any medium (other than direct-to-home satellite service) for the delivery of comparable video programming, including MMDS, LMDS, an open video system, or a cable system."

systems, therefore, are clearly direct-to-home services excluded by the statute from consideration under the new effective competition test. Subscribers should not suffer the anomalous result of losing statutory protection merely because a SMATV system sells an interest in its operation to a telephone company where such interest may constitute affiliation under the Commission's interim rules. The public interest demands that formalistic technicalities not determine whether competition is effective. Otherwise, a SMATV system with a one percent (1%) penetration rate or less would constitute "effective" competition by virtue of selling a small interest in its operation to a LEC, even though such competition is obviously insufficient to have a restraining effect on cable television rates. This surely was not Congress's intent.

B. CPST Rate Complaints

Pursuant to Section 301(b)(1)(A) of the 1996 Act, subscribers may no longer file a CPST rate complaint directly with the Commission. Only local franchising authorities ("LFAs") are now authorized to file CPST rate complaints on behalf of subscribers within their jurisdictions. The Commission generally must issue an order within ninety days in response to such complaints. Local franchising authorities are unable to file such complaints unless they receive complaints from subscribers within ninety days after a CPST rate increase becomes effective. The 1996 Act, however, does not indicate a deadline by which local franchising authorities must submit a CPST complaint to the Commission.

Under the interim rules adopted in the *Order*, franchising authorities must submit a CPST complaint no more than 180 days after the rate

increase complained of becomes effective Taking into account the other steps franchising authorities must take under the Commission's interim rules, this period is unreasonably short and will unnecessarily deprive consumers of protection from unreasonable CPST rates. This is so because when other time periods set forth in the interim rules are considered, franchising authorities are left with a sixty-day deadline in which to submit a complaint, despite the fact that the statute specifies no deadline whatsoever

The interim rules specify that before filing a complaint with the Commission, the LFA must first give the cable operator written notice of its intent to do so and give the operator a minimum of thirty days to file the relevant FCC Forms with the LFA. The LFA is then responsible for forwarding its complaint and the operator's rate justification forms to the Commission within the 180-day deadline. Consequently, under the Commission's interim rules, the LFA may be required to wait ninety days for subscriber complaints and an additional thirty days for the cable operator's response In so doing, 120 of the 180 days granted by the Commission's interim rules have been exhausted, which leaves the LFA with a sixty-day deadline. The result will be that franchising authorities are forced to file complaints at the Commission without regard to whether they are justified, since such a determination will be impossible in the remaining period.

Given Congress's decision not to impose a deadline on the filing of an LFA complaint, the Commission should not create one If the Commission decides, however, that some deadline is appropriate, the City recommends that LFAs be allowed at least 180 days from the later of their receipt of the cable operator's rate justification forms—assuming the operator files such rate

justification forms within the thirty-day period permitted under the Commission's interim rules—or expiration of the subscribers' 90-day complaint window in which to submit a CPST complaint to the Commission. This will permit a reasonable period for the LFA to review the operator's rate justification and to determine whether a complaint to the Commission is warranted.[41] Unnecessary complaints will consequently be eliminated, thereby conserving the Commission's resources.

With regard to the interim procedures generally, the City believes that they are unnecessarily burdensome to local franchising authorities, and will fail to adequately protect subscribers from unreasonable CPST rates. The LFA should not be required to notify the cable operator in advance of its intention to submit a complaint, and then wait to compile the operator's rate justification prior to submitting its complaint to the Commission. Local governments should not be saddled with the burden of tracking an additional set of deadlines, given the myriad time periods and deadlines associated with the Commission's existing quarterly and annual rate filing methodologies. This is especially so in jurisdictions such as New York City, which encompass many franchise areas served by different operators (some of which may file quarterly, some annually, and some pursuant to the Commission's cost-of-service rules). Such additional requirements unfairly burden the resources of local governments.

As an alternative to the above-mentioned recommended procedure, the Commission should consider the following approach: (1) cable operators should submit a copy of their rate justification forms to the LFA thirty days prior

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[41] LFAs, however, should not be required to review the operator's rate justification.

to the effective date of the proposed rate increase;[42] (2) if the LFA determines that a complaint is warranted, a copy of the complaint should be submitted to the cable operator simultaneous with its filing at the Commission; and (3) LFAs should be allowed a minimum of 90 days from expiration of the subscribers' 90-day complaint window in which to submit a CPST complaint to the Commission. This procedure will serve the dual purposes of reducing administrative burdens on the Commission and LFAs, and protecting subscribers from the inadvertent loss of protection against unreasonable CPST rates

Finally, the City opposes the interim determination to eliminate requiring cable operators to include the name, mailing address, and telephone number of the Cable Services Bureau of the Commission on monthly subscriber bills.[43] Although Section 301(b)(1)(C) alters the rate complaint process, the Commission should remain available to the public it is responsible for protecting. Moreover, subscribers should still be given the information necessary to contact the Commission regarding technical, signal quality, and related complaints.[44]

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[42] *c.f.* 47 C.F.R. § 76.964.

[43] *See* 47 C.F.R. § 76.952 (1995).

[44] *See* 1996 Act § 301(e).

C. Uniform Rate Requirement

Among other things, Section 301(b)(2) of the 1996 Act exempts bulk discounts to multiple dwelling units from the uniform rate structure requirement of the 1992 Cable Act.[45] To a large extent, the 1996 Act merely codified the Commission's uniform rate rule, which explicitly permitted such bulk rates.[46] Nonetheless, the Commission has amended its rule to comport with the exact language of the 1996 Act.

The City agrees with the Commission's conclusion that the bulk-rate exception does not permit a cable operator to offer a discounted rate to subscribers on an individual basis simply because they are residents of a multiple dwelling unit. If such were permitted, the uniform rate structure requirement would be eviscerated and cable operators would be given a license to discriminate among subscribers in contravention of most, if not all, franchise agreements. In short, a "bulk" discount is meaningless unless the service being purchased is acquired on a "bulk," rather than an individual basis

The Commission also seeks comment on whether bulk discounts permitted under the 1996 Act should include discounts offered to multiple dwelling unit ("MDU") residents who are billed individually, or rather should only be permitted where the property owner or manager remits payment to the cable operator on behalf of all MDU residents The City believes that nothing should prevent individually billed MDU residents from enjoying the benefits of bulk

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[45] 1996 Act § 301(b)(2), *amending* Communications Act § 623(d), 47 U.S.C. § 543(d).

[46] *See* 47 C.F.R. § 76.984 (1995)

discounts, as long as the bulk discount is negotiated by the property owner or manager on behalf of all MDU residents. A collective billing arrangement may be impractical where individual residents purchase pay-per-view or other premium services in addition to the services purchased under a bulk-rate arrangement. Individual subscribers who are participants in bulk discount plans should not be denied the benefits of lower prices merely because they receive an individual bill.

D. Technical Standards

Section 624(e) of the Communications Act provides that the Commission shall establish minimum technical standards for cable television systems with regard to technical operation and signal quality.[47] Current Commission rules mandate specific technical standards and provide for their enforcement by local franchising authorities.[48] Section 301(e) of the 1996 Act, however, deletes provisions of the Communications Act that permitted LFAs (1) to require in franchise agreements provisions for the enforcement of the Commission's technical standards, and (2) to apply to the Commission for a waiver to impose standards more stringent than those of the Commission. Section 301(e) of the 1996 Act states further that "[n]o State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology." The Conference Report indicates that Section 301(e) is intended to prohibit states and franchising authorities from

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[47] Communications Act § 624(e), 47 U.S.C. § 544(e).

[48] 47 C.F.R. §§ 76.601-76.630.

regulating in the areas of technical standards, customer equipment, and transmission technology [49]

Significantly, the 1996 Act did not amend the franchising or renewal provisions of the Communications Act [50] Thus, the question of whether the 1996 Act's amendment of Section 624(e) affects the scope of the cable franchising, renewal, or transfer processes regarding technical considerations that are clearly permitted in those situations must be answered in the negative. The plain language of Section 626 of the Cable Act explicitly permits a franchising authority to require, *e.g.*, that an operator's renewal proposal contain "such material as the franchising authority may require, including proposals for upgrade of the cable system"[51] and that it may consider the "quality of the operator's service, including signal quality"[52] during the course of renewal proceedings. In addition, Section 621 of the Cable Act states that, in awarding a franchise, the franchising authority may require that the operator have the "technical" qualifications to provide cable service. The Commission should not construe the amendment of Section 624(e) in a manner that would prevent local governments from fully taking into account technical considerations, community needs, and individual local circumstances in cable franchising, transfer, and renewal proceedings.

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[49] Conference Report at 168, 170.

[50] Communications Act §§ 621, 626, 47 U.S.C. §§ 541, 546.

[51] Communications Act § 626(b)(2), 47 U.S.C. § 546(b)(2).

[52] Communications Act § 626(c)(1)(B), 47 U.S.C. § 546(c)(1)(B).